

Exhibit D

Volume: 1
Pages: 1-155
Exhibits: See Index

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 1:19-CV-10845-ADB

*****x
GAIL SWEENEY
Plaintiff

vs.

SANTANDER BANK, N.A.
Defendant
*****x

DEPOSITION OF DANIEL J. HYLAND

APPEARING REMOTELY FROM
FRAMINGHAM, MASSACHUSETTS

TUESDAY, NOVEMBER 3, 2020

10:21 a.m.

Reported by:

Camille Macomber, CSR No. 149608
Registered Professional Reporter
Appearing Remotely from Norfolk County, Massachusetts

SHEA COURT REPORTING SERVICES
15 Court Square, Suite 920
Boston, Massachusetts 02108
(617) 227-3097
sheacourtreporting@gmail.com

REMOTE APPEARANCES:

COUNSEL FOR THE PLAINTIFF:

LAW OFFICES OF SCOTT C. HOLMES
50 Main Street, Unit 12
Charlestown, Massachusetts 02129
(617) 850-2734
scott@scottcholmes.com
By: Scott C. Holmes, Esquire

COUNSEL FOR THE PLAINTIFF:

JAMES E. NEYMAN & ASSOCIATES, P.C.
76 Canal Street, 3rd Floor
Boston, Massachusetts 02114
(617) 723-2608
james@neymanandassociates.com
By: James Neyman, Esquire

COUNSEL FOR THE DEFENDANT

LITTLER MENDELSON, P.C.
One International Place
Suite 2700
Boston, Massachusetts 02110
(617) 378-6000
smelnick@littler.com
By: Stephen Melnick, Esquire

Also Appearing Remotely:

Gail Sweeney

1 was multiple issues that led to the termination,
2 not that one in and of itself.

3 Q. What else led to it?

4 A. Let me answer the other part of your question
5 first.

6 We had somebody that, the way that that
7 was delivered or whatever transpired at the
8 time, it was a concern for one of our colleagues
9 that was raised up to Employee Relations.
10 Employee Relations' duty then is to look into
11 that and determine what the appropriate next
12 steps are. It was determined that the
13 appropriate next steps were to conduct an
14 investigation, which is what took place where
15 more information was composed.

16 You know, some of those other things go
17 back to the follow-up question you just asked.
18 There were comments, if I remember correctly,
19 around African-American that were racially
20 insensitive. And I believe there was another
21 comment around team members that were speaking
22 in another language other than English.

23 Q. What was racially insensitive?

24 MR. MELNICK: Objection.

1 A. I believe the comments were paraphrasing, it was
2 about African-Americans, "They sit around. What
3 are they even doing?" Something like that.

4 Q. Would it be fair to say that that's actually --
5 first of all, she denied that, correct,
6 Ms. Sweeney?

7 A. I believe so, if I remember correctly, that
8 comment in particular.

9 Q. And half the people -- at least half the people
10 interviewed knew nothing about that. Are you
11 aware of that?

12 MR. MELNICK: Objection.

13 A. I don't recall.

14 Q. So if that's true, then, wouldn't you say that
15 the credibility of that comment is somewhat
16 suspect?

17 MR. MELNICK: Objection.

18 A. I wouldn't speculate. I don't know who was
19 spoken with, who corroborated, who didn't.

20 Q. Would it be fair to say that she wasn't saying
21 it, if as alleged, generally; it was directed at
22 specific employees. Are you aware of that?

23 MR. MELNICK: Objection.

24 A. Sorry. Can you repeat that question?

1 A. Is the question whether I have seen this
2 statement on this document?

3 Q. Yes.

4 A. Not that I recall.

5 Q. I would like you to then switch to Exhibit 13,
6 Andrew Grossman, page 415.

7 (Exhibit No. 13, Andrew Grossman
8 Interview, screen-shared.)

9 Q. Have you ever seen this document?

10 A. I don't recall.

11 Q. Are you aware that this is part of Ms. Urbano's
12 investigation?

13 MR. MELNICK: Objection.

14 A. I was familiar at the time that there were
15 racially insensitive comments made.

16 Q. That wasn't my question though, respectfully.
17 I'm asking you, are you familiar with this
18 document?

19 A. I don't recall whether or not I had seen this
20 specific document at the time.

21 Q. Do you see where it says above the comment from
22 Andrew, "What do all of the black people do
23 here - all just stand around"?

24 A. Yes, I see that.

1 Q. Is that the insensitive comment you're referring
2 to?

3 A. That's the commentary I was referencing earlier,
4 paraphrasing earlier. I'm aware of that.

5 Q. Are you aware that that comment was never said
6 to any African-Americans?

7 A. I don't recall the details of who it was said
8 to.

9 Q. Well, do you see above, it says, "References: 3
10 black colleagues." Do you see that?

11 A. I do.

12 Q. So would it be fair to say you didn't know that
13 at the time you terminated Ms. Sweeney?

14 MR. MELNICK: Objection.

15 A. Again, can you ask me that question one more
16 time before I answer it, please?

17 Q. Would it be fair to say that you didn't know
18 that Andrew Grossman was referring to the
19 comment referenced "3 black colleagues" only?

20 A. Again, I don't recall the details; I do recall
21 the commentary.

22 Q. If you knew that two of those were fired for
23 poor performance, and the third left, would that
24 still be a racist comment, in your opinion?

1 Q. But it says above, "Referencing: 3 black
2 colleagues," which I submit you didn't know when
3 you made your decision.

4 MR. MELNICK: Objection.

5 Q. And if you take the reason that they were
6 terminated, that would justify a comment on poor
7 performances, wouldn't it?

8 MR. MELNICK: Objection.

9 A. So you're asking for my opinion. I think if
10 your opinion is that "what do all of the black
11 people do here" regardless of who it's in
12 reference to is not a racist comment, I
13 disagree.

14 Q. That's not my comment, though. If it's taken,
15 and you only got part of the statement, the
16 remainder of the statement says, "In reference
17 to 3 black colleagues" with 3 underlined. And
18 then their names are given.

19 MR. MELNICK: Objection.

20 Q. Can you tell me how that's racist?

21 MR. MELNICK: Objection. He's answered
22 that several times.

23 MR. NEYMAN: No, he hasn't. He has not
24 answered how that in conjunction with the three

1 named employees is racist.

2 A. Again, I would submit that "What do all of the
3 black people do here - all just stand around" in
4 quotes is a racist comment. Whether it's in
5 reference to three specific black colleagues
6 with poor performance or exceptional performance
7 or 30 African-American colleagues with poor
8 performance or exceptional performance. "What
9 do all these black people do here?" I take as a
10 racist comment.

11 Q. Okay. So even if it actually refers to three
12 people?

13 MR. MELNICK: Objection. He just said
14 that.

15 Q. It's not a condemnation of the entire race, it's
16 three people at work.

17 MR. MELNICK: Objection.

18 Q. Two of which got fired, if you look at the list
19 of employees that was provided by your counsel.
20 August was clearly -- we've been through that in
21 other depositions -- he was going to be terminated for
22 poor performance. I looked up all three. Two
23 of them, I can't recall at the moment, were
24 terminated for performance, and one left. So

1 "What do all the black people do here - all just
2 stand around," that appears to be the full
3 comment. There appears to be an arrow pointing
4 to -- coming from that comment that seems to
5 indicate that Andrew Grossman believes that that
6 comment in its entirety is in reference to three
7 specific colleagues.

8 Q. Right.

9 A. So that comment in quotes, "What do all the
10 black people do here - all just stand around,"
11 is a racially insensitive comment.

12 Q. Regardless of whether it's in conjunction with
13 three employees, two of which were terminated
14 for performance?

15 MR. MELNICK: Objection.

16 A. The performance of the employees that Andrew
17 Grossman believes that this was in reference to
18 doesn't change the racial insensitively
19 associated with the comment itself.

20 Q. Nor the fact that it's referring to three
21 people, in your opinion?

22 A. Just my opinion. I don't believe that a number
23 of employees that that comment Andrew Grossman
24 believes it's referencing is material. Whether

1 it's one or twenty, I think it's a racially
2 insensitive comment.

3 Q. Did you ever talk to Gail about this?

4 MR. MELNICK: Objection.

5 A. I don't believe so.

6 Q. There's about half as many denied comments, at
7 least, that she said anything racially
8 insensitive, including yourself, so how did you
9 make your determination on who to believe?

10 MR. MELNICK: Objection.

11 A. So Karin, from Employee Relations, walked me
12 through the results of the investigation, we
13 looked at all those results together and the
14 decision was made to move forward with the
15 termination based on those results.

16 Q. But that's not answering the question. Did you
17 know when you made your decision that several
18 people denied hearing any comments?

19 MR. MELNICK: Objection.

20 A. I don't remember the specifics of our
21 conversation, but I do know that she talked to
22 multiple people. Again, I wouldn't speculate as
23 to what specifically they talked about.

24 Q. Would it be fair to say that there were no

1 the role.

2 Q. So it is purely coincidence that in 2017 out of
3 40 people hired, 36 were under 40.

4 MR. MELNICK: Objection.

5 A. Typically, in call center type roles, the folks
6 that are applying for those types of roles tend
7 to skew younger. That may drive that statistic
8 you just pulled up, but it's certainly not --
9 some of our top performers are older. So it's
10 certainly not something that we consider as part
11 of our hiring process.

12 Q. Can you name any of those top performers because
13 it doesn't seem like there's -- there's only a
14 handful or less of people over 50.

15 MR. MELNICK: Objection.

16 A. Is the question you're asking me to name someone
17 on my team right now that's over 50 and a top
18 performer?

19 Q. Yes. How many people can you name?

20 A. Sure. One that comes to mind is Edith Almeida.

21 Q. Anyone else?

22 A. I don't know the exact ages of the folks on my
23 team, but Edith is a good example. She's been
24 with the team for a long time.

1 A. I don't know. It would be interesting to see
2 the year before that what the percentage was or
3 the year after that. Right. I don't know that
4 that in and of itself -- as I mentioned earlier,
5 a lot of these roles are call center roles. A
6 lot of the applicants that we have historically
7 across all call centers, also thinking about
8 previous lives in other organizations, tend to
9 skew younger. So I don't know that that shows a
10 trend in any direction without having that same
11 information for the previous year. And whether
12 it does or not, the only thing that we take into
13 account is who are the most qualified candidates
14 when we have an open requisition, we have a
15 standard review process, and that's how our
16 hiring works. There's no ulterior motives,
17 there's nothing else behind it.

18 Q. Well, I thought you said you didn't know the
19 ages of the employees, so how do you know that's
20 true?

21 MR. MELNICK: Objection.

22 A. I'm reacting to your statement that said, I
23 believe, 36 out of the 40 were -- I don't know
24 what the age.

1 Q. Under 40.

2 A. Under 40?

3 Q. Yes.

4 A. And I'm saying that generally speaking positions
5 in contact centers, folks that apply for those
6 positions tend to skew younger, in my
7 experience. Not that I know the ages of
8 everybody on my team.

9 Q. Turning to [Exhibit 21](#). It's an email from you
10 to Ms. Urbano, 000154.

11 ([Exhibit No. 21](#), Email dated
12 10/16/19, screen-shared.)

13 Q. If there was a disproportionate number of
14 employees over 40, either being terminated or
15 leaving the company around the time of Gail
16 Sweeney, could you at least infer that one of
17 the reasons might be due to age --

18 MR. MELNICK: Objection.

19 Q. -- or would that be speculation?

20 A. It would be speculation.

21 Q. Going to 154, there's an email from you to
22 Ms. Urbano. This is obviously around the
23 termination time. At the top, just so I'm
24 clear, what is an EAR complaint?

1 Q. The meeting to terminate Gail, was anyone taking
2 notes at that meeting?

3 A. No, I don't believe so.

4 Q. So as far as what was said to Gail as far as the
5 specific reason for her termination, that does
6 not exist in writing?

7 MR. MELNICK: Objection.

8 A. No, the verbatim language used is not
9 transcribed anywhere.

10 Q. So what is your memory of exactly what was said?
11 Strike that.

12 What was given as the reason?

13 A. Again, there was no reason. If memory serves,
14 the basis of the termination was behavioral
15 based on conduct tied to racially insensitive
16 and discriminatory behavior and remarks.

17 Q. Anything else?

18 A. Not that I recall.

19 Q. And you were the one delivering this?

20 A. I was, in conjunction with Perry from Employee
21 Relations.

22 Q. I would like you to refer to [Exhibit 18](#), please.

23 ([Exhibit No. 18](#), Email, Subject:

24 Hostile Environment Complaint,

1 types of discipline were discussed?

2 A. Again, so when speaking with Employee Relations,
3 obviously there's awareness of all of the
4 different options and we talked through what's
5 the most appropriate. This scenario would have
6 been no different.

7 Q. What was said and who said it?

8 MR. MELNICK: Objection.

9 A. I don't recall.

10 Q. So, as we sit here today, do you have a specific
11 memory of speaking to someone about potential
12 outcomes here of different types of discipline?

13 A. Yes. So at the time, Karin Urbano and I, in
14 going through this scenario, the results of the
15 investigation had dialogued around what the
16 appropriate course of action was, including
17 final written warning, written warning,
18 termination, all of the potential courses of
19 action that we had available to take.

20 Q. I would like you to refer to [Exhibit 28](#), Answers
21 to Interrogatories, page 5.

22 ([Exhibit No. 28](#), Answers to
23 Interrogatories, screen-shared.)

24 A. Is there something specific you want me to

1 then something like performance and tenure would
2 carry less weight and would not feed into the
3 ultimate decision that we landed on of
4 termination.

5 Q. How many times have you met Attorney Melnick on
6 this case -- met with?

7 A. We had one call last week.

8 Q. Any other time?

9 A. No.

10 Q. So one meeting in October of 2020 with Attorney
11 Melnick to prepare for this deposition; correct?

12 A. I believe it was the 29th.

13 Q. Any other attorney?

14 A. No.

15 MR. NEYMAN: I'm almost done.

16 Q. Would it be fair to say that the three alleged
17 incidents being, for lack of a better term,
18 English to Spanish event, alleged racial
19 comment, and the Russian conversation in the
20 break room were the basis of the termination or
21 am I putting words in your mouth or is it
22 something different?

23 MR. MELNICK: Objection.

24 A. Those were certainly key elements. In addition

1 to that, again, I believe we talked about it
2 earlier and if I remember correctly, there was
3 also a comment around newer hires that when
4 you're in the U.S., you speak English, something
5 to that effect. But yes, those four -- the
6 Russian -- speaking in Russian, I don't quite
7 recall. I do recall the other three. But those
8 were certainly key elements in the final
9 decision.

10 Q. Are you positive about that?

11 MR. MELNICK: Objection.

12 Q. To the best of your knowledge?

13 A. To the best of my recollection, those items were
14 key elements in the decision.

15 Q. And again, anything else, as we sit here today?

16 A. Nothing specific that I can recall.

17 Q. Do you know Christine Ciarrocchi?

18 A. I'm unfamiliar with that name.

19 Q. So if I advise or suggested that she's an
20 attorney that did work for Santander, that would
21 have no input on you or recollection or reminder
22 to you in any way?

23 A. I'm unfamiliar with the name.

24 Q. Do you consider one's state of mind in making

1 MR. NEYMAN: Can you tell me what page it
2 is?

3 MR. MELNICK: SBNA 355 and 356 is being
4 marked as [Exhibit 30](#). Are we all on the same
5 page?

6 MR. NEYMAN: I'm just voicing an objection
7 for the record, but yes.

8 Q. Mr. Hyland, do you recognize this document,
9 [Exhibit 30](#)?

10 A. Yes.

11 Q. What is this document?

12 A. This is the outline of the discussion that we
13 held with Gail at her termination.

14 Q. And how did you get this document?

15 A. It came from Karin from Employee Relations.

16 Q. To the best of your recollection, does this
17 outline the discussion that you had with
18 Ms. Sweeney about her termination.

19 MR. NEYMAN: Objection.

20 A. It does.

21 Q. I believe you said that Perry Vachon also spoke
22 at that meeting?

23 A. She did.

24 Q. Can you tell me what parts of this [Exhibit 30](#)

1 that you went over and what parts Ms. Vachon
2 went over?

3 A. Sure. The beginning piece -- again, this was a
4 while back. But the first piece was Employee
5 Relations; the termination section, as indicated
6 on this document, was handled by me; and then I
7 turned it back over to Perry for this final
8 separation agreement to walk through some of the
9 further details.

10 Q. So in that underlined parts where it says, "By
11 manager," that's when you would have been
12 speaking; correct?

13 A. That's right.

14 Q. And by Employee Relations would have been when
15 Ms. Vachon was speaking?

16 A. Correct.

17 Q. The decision to terminate Ms. Sweeney or end her
18 employment, was that based on her age at all?

19 MR. NEYMAN: Objection.

20 A. Not at all.

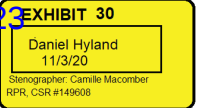
21 Q. Was that based on her sex or gender at all?

22 A. Not at all.

23 MR. MELNICK: Nothing further from me.

24 MR. NEYMAN: Can you go to the top?

Hyland Dep. Exhibit 30



Message

From: Fitch-Urbano, Karin A [karin.fitch@santander.us]
Sent: 6/23/2017 5:16:25 PM
To: Hyland, Daniel J [daniel.hyland@santander.us]; Williams, Kim L [kwillia6@santander.us]
Subject: Script: meeting w/ Gail

A. Introduction - By Manager

a. Hello Gail, we are here today with Perry Vachon from Employee Relations to follow up on a serious matter brought to our attention regarding continued concerns about your workplace communications.

B. Reference to Issue - By Employee Relations

- a. As you know, concerns were raised about your vocal intolerance of foreign languages in the workplace or on the phone. Given our diverse colleague and customer base, we take such allegations very seriously.
- b. Employee Relations undertook an investigation and has found that you've been openly vocal about demanding English only in both the office and on the phone. This has been found to be offensive and discriminatory to several colleagues based on their national origin.
- c. It was also found that you have been vocal on more than one occasion about certain racial and ethnic groups speaking of them in a disparaging manner in the office.

C. Termination – By Manager

- a. Gail, in addition to causing discomfort to colleagues, this has been severely disruptive to the team and negatively impacted your job performance.
- b. I find your conduct inappropriate and disrespectful toward colleagues and customers. Colleagues do not deserve to feel uncomfortable at the office simply because of who they are based on their native language, ethnicity, or race.
- c. This is a violation of basic professional standards and the Code of Conduct which are founded on respect for diversity. Mutual respect for our differences is fundamental to our success as a team and as an organization.
- d. I must therefore inform you that, because of your repeated conduct, management has lost trust and confidence in your ability to perform effectively at Santander.
- e. As a result, the Bank has decided that it has grounds to terminate your employment.

D. Separation Agreement – By Employee Relations

- a. As we recognize that immediate termination may result in a hardship for you, the Bank has approved giving you an opportunity to resign by mutual agreement providing you an Extended Paid Notice Period through August 25th.
- b. This means that you will go home today, and your termination date will be set for August 25, 2017. The time period between now and 8/25 will be fully paid and you will continue your benefits coverage. In addition, the Bank will not contest any claim for unemployment benefits.
- c. In order to receive the extended notice period, you must sign this Separation Agreement [hand two copies of Agreement, plus EAP brochure].
- d. There are two Acceptances to sign:
 - i. First, you have 21 days to sign Acceptance #1, which will trigger the fully paid non-working notice period until Termination Date of 8/25/17.
 - ii. Second, you have up to 7 days after 8/25 to sign Acceptance #2 for Santander to refrain from contesting unemployment benefits

e. Importantly, please be advised that if you choose not to sign the Agreement, your effective termination date shall be 21 days from today.

f. [Collect badge, i-phone, laptop; gather TM's personal belongings and escort out of building]
[Provide opportunity to ask questions]

Possible FAQ's

Q: This is unfair – I did not do anything wrong. Can I appeal this decision?

A: Employee Relations conducted a thorough, confidential investigation and have substantiated accounts about your conduct. There is no appeal, and this decision is final.

Q: This is all fabrication, and you are discriminating / retaliating against me.

A: We can assure you that Employee Relations ensured a fair and objective review of this situation in accordance with Santander policy which prohibits discrimination and retaliation. Your conduct has, unfortunately, caused management to lose trust and confidence in your ability to continue effectively as a team member.

Q: Who did you interview, what about my point of view? Can I see your investigation report?

A: Employee Relations assures team members who participate in HR investigations of confidentiality, and the investigation is considered confidential for HR use only. Employee Relations have substantiated your communications from multiple sources.

Q: What about [name] or [name]? They say terrible things in the office too.

A: We cannot discuss other personnel actions for confidentiality reasons, just as you would not appreciate your personnel matters being discussed with other colleagues. However, we can assure you that appropriate HR actions regarding other team members will be taken.



Karin Fitch-Urbano

HR Employee Relations Lead Consultant

5 Whittier Street

Framingham, MA. 01701

Telephone: 508-808-6614 (376614)

Fax: 508-270-6037

Mail Code: MA1-WHT-0602

Karin.Fitch@Santander.us